

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREEN EDGE ENTERPRISES, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 4:02CV566 TIA
)	
RUBBER MULCH ETC., LLC, et al.,)	
)	
Defendants/Counterclaim Plaintiffs,)	
)	
v.)	
)	
GREEN EDGE ENTERPRISES, LLC,)	
INTERNATIONAL MULCH COMPANY, and)	
MICHAEL MILLER, et al.,)	
)	
Counterclaim Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on International Mulch Company and Michael Miller's Motion to Dismiss with Prejudice [Doc. #585], Ronald Foster and Sara Pfrommer's Motion to Withdraw Appearance on Behalf of Rubber Resources [Doc. #586], and a Joint Motion to Dismiss [Doc. #587] filed by International Mulch Company, Michael Miller, and Rubber Resources, Ltd. The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

The present patent case has been pending before this Court since April 19, 2002. On April 15, 2011, a jury returned its verdict finding, among other things, that all 8 claims of the '514 Patent pertaining to rubber mulch were invalid on the bases that the claims were anticipated by any of the prior art and that they would have been obvious to a person of ordinary skill in the field given the prior art references and devices. (Verdict Form, ECF No. 512) During the trial, the parties requested that the Court bifurcate the trial, severing Rubber Resources' unfair competition counterclaim to

make it available for immediate appeal. On August 9, 2011, the Court issued Judgment in favor of Rubber Resources, International Mulch Company, and Michael Miller and against Green Edge Enterprises, LLC on the verdict invalidating the patent. (Judgment, ECF No. 556) That same day, this Court certified the unfair competition claim for interlocutory appeal. (Mem. and Order, ECF No. 557)

Rubber Resources filed a Petition for Permission to Appeal in the Federal Circuit Court of Appeals on August 19, 2011. The Federal Circuit denied the petition on December 13, 2011. Green Edge Enters., LLC v. Rubber Mulch, Etc., 2011 WL 6187107 (Fed. Cir. Dec. 13, 2011). International Mulch and Michael Miller filed a motion to dismiss on April 3, 2012, and a joint motion to dismiss filed by International Mulch, Michael Miller, and Rubber Resources followed soon thereafter. (ECF Nos. 585, 587) In addition, two of Rubber Resources' lead counsel filed a motion to withdraw appearance on April 12, 2012. (ECF No. 586) Plaintiff/Counterclaim Defendant Green Edge, as well as Cross/Counterclaim Defendants Judy Smith and Lee Greenberg have not filed responses to any of the pending motions, and the time for doing so has expired.

Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." In the Joint Motion to Dismiss, Rubber Resources requests that this Court dismiss with prejudice Count V of its First Amended Counterclaim, which alleges unfair competition under the Lanham Act. According to the motion, International Mulch, Michael Miller, and Rubber Resources have reached a settlement agreement to dismiss the counterclaim, each party to bear its own costs and attorneys' fees. The undersigned finds that, after a decade of litigation, the terms in the joint request are proper.

Accordingly,

IT IS HEREBY ORDERED that the Joint Motion to Dismiss [Doc. #587] is **GRANTED**.
Count V of Rubber Resources' First Amended Counterclaim is **DISMISSED** with **PREJUDICE**,
each party to bear its own costs and attorneys' fees.

IT IS FURTHER ORDERED that Ronald Foster and Sara Pfrommer's Motion to Withdraw
Appearance on Behalf of Rubber Resources [Doc. #586] is **GRANTED**.

IT IS FINALLY ORDERED that International Mulch Company and Michael Miller's
Motion to Dismiss with Prejudice [Doc. #585] is **DENIED** as **MOOT**.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE

Dated this 1st day of May, 2012.